
(2017) 03 CAL CK 0023
In the Calcutta High Court
Case No : 1138 of 2016

Union of India & Ors.

APPELLANT

Vs

Smt. Sadhana Bala Dhara & Ors.

RESPONDENT

Date of Decision : 08-03-2017

Acts Referred:

Citation : (2017) 03 CAL CK 0023

Hon'ble Judges : Nishita Mhatre, Tapabrata Chakraborty

Bench : DIVISION BENCH

Advocate : Sanjib Kumar Ghosh, Ramdulal Manna, ?Mukteswar Maity, ?
Sabyasachi Mondal, ?Tapan Kumar Mukherjee, ?Rabindra Narayan Dutta

Judgement

1. As we have invited the learned advocates appearing for the respective parties to address us on merits of the appeal, we condone the delay towards preference of the instant appeal and allow the application being CAN No.7038 of 2016.

2. A procrastinated legal battle pertaining to grant of pension under the Swatantrata Sainik Samman Pension Scheme, 1980 (hereinafter referred to as the said scheme) culminated in an order dated 15th December, 2015 passed by the learned Single Judge in W.P. No.11970 (W) of 2009 upholding the claim towards grant of pension under the said scheme. The said order dated 15th December, 2015 is under challenge in the instant appeal.

3. The undisputed facts are that Sadhan Chandra Dhara submitted an application for pension under the said scheme on 27th July, 1991 accompanied with a Personal Knowledge Certificate (hereinafter referred to as PKC) of a prominent freedom fighter, namely, Rabindra Nath Giri. The claim towards grant of such pension was recommended by the State Government vide memorandum dated 1st November, 1989. As no final order was passed by the appellants herein, writ petition being C.O. No.3325 (W) 1984 was preferred which was disposed of by an order dated 21st March, 1994 directing the appellants to consider the claim effectively in the light of the recommendation made by the State Government.

Pursuant thereto, the appellant no.2 rejected such claim by an order dated 2nd August, 1994 which was again challenged by a writ petition being W.P. No.16555 (W) 1999 and during pendency of the same Sadhan Chandra Dhara expired on 19th March, 1998 and his widow pursued the said litigation upon substitution. The said writ petition was thereafter disposed of by an order dated 19th November, 1999 setting aside the impugned order dated 2nd August, 1994 and directing the appellants to consider the claim in the light of the judgment passed in Cal.LT 1999(1) HC 241 (Gokul Ch. Panja Vs. Union of India & Ors.) and also the Division Bench judgment passed in FMAT No.2823 of 1993 (Union of India Vs. Haripada Samanta & Ors.). The appellants did not prefer any appeal against the said order dated 19th November, 1999. Alleging non-compliance of the same, a contempt application was filed and during pendency of the same the appeal preferred by the appellants against the order passed in the case of Gokul Ch. Panja (supra) was dismissed by the Division Bench and as such the contempt application was disposed of by an order dated 12th July, 2000 directing the appellants herein to comply with the order dated 19th November, 1999 passed in W.P. No.16555 (W) 1999. Subsequent thereto, the appellant no.2 passed an order on 2nd August, 2000 rejecting the claim for pension. The said order was again challenged by a writ petition being W.P. No.13959 (W) of 2000 and the same upon contested hearing was disposed of by an order dated 23rd July, 2002 setting aside the order impugned therein and directing the appellants to decide the matter afresh on the basis of the documents produced before the said authorities and the recommendation by the State of West Bengal. Pursuant thereto, the appellant no.2 again rejected the claim by an order dated 30th June, 2003. Challenging the same the respondent no.1 herein preferred a fresh writ petition being W.P. No.11970 (W) of 2009 and the same was allowed by setting aside the order dated 30th June, 2003.

4. Scrutiny of the records reveal that the ground for rejection of the claim towards pension contained in the orders dated 2nd August, 2000 and 30th June, 2003 passed by the appellant no.2 are almost identical. The claim towards pension was primarily denied on the ground that no supporting document could be produced by Sadhan Chandra Dhara to prove that either detention orders were passed against him or he was declared a proclaimed offender or there was an award for his arrest and that he went underground voluntarily as per direction of the leader. The said reasoning given by the appellant no.2 in the order dated 2nd August, 2000 had already been set aside in the earlier round of litigation by an order of this Court dated 23rd July, 2002 and no appeal was preferred against the same by the appellants herein. Furthermore, the order dated 30th June, 2003 was passed being oblivious of the fact that the claim for pension had already been recommended by the State Government by a memorandum dated 1st November, 1989 and that the District Magistrate had certified that the records pertaining to the period from 1930 to 1946 are not available. While passing the said order dated 30th June, 2003, the appellant no.2 also did not take note of the fact that the claim of the respondent no.1 was directed to be

considered in the light of the judgment delivered in Gokul Ch. Panja (Supra) and that the appeal preferred against the judgment delivered in Gokul Ch. Panja (Supra) had already been dismissed by the Division Bench of this Court and thereafter the appeal preferred against the same before the Hon"ble Supreme Court was also dismissed.

5. Mr. Ghosh, learned advocate appearing for the appellants argues that the learned Single Judge while disposing of the writ petition did not take into consideration the revised policy guidelines for disbursement of Central Samman Pensions dated 6th August, 2014. Such contention is not acceptable to this Court since the revised guidelines can have no manner of application in respect of a claim for pension submitted on 27th July, 1981. Furthermore, the claim was directed to be considered in the light of the judgment dated 2nd September, 1998 delivered in the case of Gokul Ch. Panja (Supra), against which the appeal preferred by the appellants herein was dismissed by the Hon"ble Supreme Court.

6. Mr. Ghosh further argues that the PKC issued by Rabindra Nath Giri has been certified "to the best of my knowledge and belief" and not as "true to knowledge" and as such no reliance can be placed upon the same. According to him, there has been a failure on the part of the applicant to produce relevant documents in support of the fact that he went underground as he was a proclaimed offender or as he was one on whom an award for arrest was announced or as he was one for whose detention, an order was issued but not served. In support of such argument reliance has been placed upon a common judgment delivered in the case of Union of India & Ors. ?vs- Smt. Suvadra Bala Paul & Ors and Smt. Atul Bala Maity ?vs- The Union of India & Ors.

7. A perusal of the said judgment delivered in the case of Smt. Suvadra Bala Paul (Supra) reveals that the Hon"ble Court upon considering the facts involved in the said lis arrived at a finding that no case could be made out by the writ petitioner to show that he had any right to get the pension and that the certificate submitted by the petitioner therein was not in conformity with the requirement of the said scheme. In the instant case the PKC was issued in the prescribed form and the authenticity of the same had never been challenged by the appellants. Furthermore, by the order dated 19th November, 1999 passed in W.P. No.16555 (W) of 1999 the appellants were directed to consider the case of the writ petitioner in the light of the judgment delivered in the case of Gokul Ch. Panja (Supra) and that the said judgment, having not been appealed against by the appellants, is binding amongst the parties inter se. In Gokul Ch. Panja (Supra), the Hon"ble Court considered the provisions of the Police Regulation of Bengal, 1943 and scrutinised the records pertaining to village crime note book in respect of different villages including the village of Sadhan Chandra Dhara, namely, Ichhabar (sic Ichhabari) and it was found that the entries in the village crime note book do not relate to the period from 1942 to 1944 and that in such circumstances it was observed that it is only the personal knowledge certificate which has to be accepted. The factual scenario involved in the case of Gokul Ch.

Panja (Supra) is identical to the facts of the instant case and in such circumstances it would be inequitable to mete out dissimilar treatment to a similarly placed person.

8. The arguments advanced by Mr. Ghosh also do not feature in the order impugned in the writ petition and the validity of the said order was rightly judged by the learned Single Judge on the reasons mentioned in the order impugned.

9. The learned Single Judge upon dealing with all the factual issues has arrived at specific findings and we do not find any error in the same. The order impugned in the appeal does not suffer from any jurisdictional error or any manifest injustice warranting interference of this Court.

10. The appeal is accordingly dismissed.

11. In view of dismissal of the appeal, the application for stay being CAN No.7041 of 2016 has become infructuous and the same is also dismissed. There shall, however, be no order as to costs.

Urgent Photostat certified copy of this judgment, if applied for, be given to the parties, as expeditiously as possible, upon compliance with the necessary formalities in this regard.